

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

No modifications have been made to the proposed regulations. As such, there is no update to the Initial Statement of Reasons.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 20, 2007 THROUGH JUNE 6, 2007

Written comment of Jai K. Alimchandani, APM-Maersk

Comment 1: Commenter is concerned that because the proposed interim performance standards are more stringent than those adopted by the International Maritime Organization, it may be challenging for vessels to comply.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Written comments of John Berge, Pacific Merchant Shipping Association

Comment 2: Commenter is concerned with California's pursuit of unique standards that are not aligned with established international standards or the more rigorous standards proposed by the United States Coast Guard and proposed federal legislation.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Comment 3: Commenter requests changing language in §2293 from "Commission" to "Administration", arguing that the Commission lacks expertise to make determination that a conversion provides a life extension of ten years or more to a vessel.

Response: Staff disagrees. The quality of Flag State administrative agencies varies dramatically, severely limiting the Commission's ability to rely on them for quick and accurate responses. Furthermore, the Commission has the resources in-house or is able to contract with Maritime Classification Societies to make this determination. Many of these classification societies make these types of determinations in their role as "recognized organizations" on behalf of many flag states or their administrations.

Comment 4 & 5: Commenter suggested amending §2293 and §2294 to include language referring to the Commission's mandate to provide reports to the Legislature in advance of each implementation date, beginning on or before January 1, 2008.

Response: Staff disagrees with the need to include this provision in the regulation. The enabling legislation (§71205.3(b)) clearly outlines the Commission's requirements to "... prepare, or update, and submit to the Legislature a review of the efficacy, availability, and

environmental impacts. . . of currently available technologies for ballast water treatment systems.” Referral to these reports adds no clarity to the regulations.

Written comments of Kathy Metcalf, Chamber of Shipping of America

Comment 6: Commenter notes the need to regulate ballast water discharges and supports the general format of the California proposal.

Response: The Commission thanks the Commenter for their support, and notes that no change is required in the proposed regulations.

Comment 7: Commenter believes that standards are unreasonable, unachievable and not measurable. Zero discharge should not be required until technologies have met International Maritime Organization standards or proposed standards in pending federal legislation.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Comment 8: Commenter notes that the time between the first implementation date and a technology pre-review being undertaken by IMO is only 18 months.

Response: Comment is noted. Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Comment 9: Commenter wonders what technologies can meet the proposed federal standard and the interim discharge standards of Article 4.7.

Response: Pursuant to Public Resource Code §71205.3, the Commission will review the efficacy, availability and environmental impacts of currently available technologies for ballast water treatment systems, and submit a report to the Legislature on or before January 1, 2008.

Comment 10 & 12: Commenter states that it will be impossible to meet the final performance standard of zero detectable discharge for all organisms by January 1, 2020 and that the standards should be more realistic.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Comment 11: Commenter believes that the regulation should include sampling and analytical protocols for evaluating treatment technologies.

Response: The effective implementation of performance standards for the discharge of ballast water requires not only the adoption of numeric standards, but also the development of protocols to assess whether technologies meet the standards initially and field-level procedures and processes to verify compliance through time. Pursuant to Public Resources Code

§71205.3, the proposed performance standards must be adopted by January 1, 2008. The development of protocols to evaluate treatment technologies is underway, and will be submitted in a separate rulemaking package in early 2008. The comment is not relevant to the proposed regulations.

Comment 13: Commenter believes that language regarding the mandatory establishment of shore reception facilities should be included in these proposed regulations to avoid ballast water discharge.

Response: The performance standards and implementation schedule in Public Resources Code §71205.3 do not specify the exclusive use of any particular type of technology. Rather a vessel, in meeting the proposed standards, can utilize on-board treatment technology, shore base reception facilities, or simply retain all ballast water on board while in State waters in order to meet the discharge standards.

Comment 14: Commenter challenged our assessment of economic impacts included in the Notice of Proposed Rulemaking, stating that our estimated costs are significantly lower than costs projected by the maritime industry.

Response: During the preparation of CSLC's 2006 Report (Falkner et al., 2006), Staff contacted several treatment system developers and ship owners and collected the best available information on the costs of systems installed onboard operational vessels. Information available on equipment and installation costs for treatment systems ranged from \$150,000 to \$525,000 per vessel. Operational costs were not available. As additional new information becomes available on installed, full-scale systems, Staff will incorporate it into our legislatively mandated 2008 report. The comment does not change the proposed regulations on performance standards.

Comment 15: Commenter would like to endorse the comments provided by the Pacific Merchant Shipping Association.

Response: Comment is noted. The comment does not change the proposed regulations.

Written comments of Charlie Miller, Ecochlor, Inc.

Comment 16: Commenter believes that it is impossible to verify the standard in §2293 (a) of no detectable organisms greater than 50 micrometers in minimum dimension.

Response: The effective implementation of performance standards for the discharge of ballast water requires not only the adoption of numeric standards, but also the development of protocols to assess whether technologies meet the standard initially and field-level procedures and processes to verify compliance through time. Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation. The development of protocols to evaluate treatment technologies is underway, and will be submitted in a separate rulemaking package in early 2008. The comment is on protocols of verification and not on proposed regulations.

Comment 17: Commenter notes that in order to verify compliance with performance standards, testing methods must be usable in the field and must provide rapid results.

Response: Comment rejected. The effective implementation of performance standards for the discharge of ballast water requires not only the adoption of numeric standards, but also the development of protocols to assess whether technologies meet the standard initially and field-level procedures and processes to verify compliance through time. Pursuant to Public Resources Code §71205.3, the proposed performance standards must be adopted by January 1, 2008. The development of protocols to evaluate treatment technologies is underway, and will be submitted in a separate rulemaking package in early 2008. The comment is on testing methods and not on performance standards.

Comment 18: Commenter believes California should adopt standards that correlate with proposed Federal regulations.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation. The comment is rejected as there are no Performance Standards, mandated by the Federal Government.

Comment 19: Commenter suggested amending §2296 by extending the equivalency provision from five years to the life of the vessel.

Response: The delay of application for vessels participating in promising technology evaluations must be adopted as specified in Public Resources Code §71204.7. The five-year delay cannot vary from that specified in §2296.

Comment 20: Commenter believes language should be added to §2296 specifically referencing the United States Coast Guard's Shipboard Technology Evaluation Program (STEP).

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Mention of the U.S. Coast Guard's Shipboard Technology Evaluation Program is not specified or suggested by the PRC, nor would it clarify the proposed regulation.

Comment 21: Commenter believes language should be added to §2296 defining "serious deficiency".

Response: The language is the same as that found in the Public Resources Code §71204.7 and is included here to provide clarity. Additionally, the purpose of the provision is to ensure that ballast water treatment systems do not, at any time, adversely impact the environment or human safety. Though treatment systems may initially meet the proposed performance standards while also maintaining human safety and minimizing environmental impact, some treatment systems may fail to perform at their anticipated level overtime. However, because treatment systems are a diverse and newly emerging technology, the specific causes or events that result in a system not functioning as anticipated cannot be definitively predicted. A list of specific deficiencies was excluded from the regulation so that any system which does not operate properly, or that endangers the environment or human safety, would not be permitted continued operation in California, regardless of the source of the deficiency. Such a deficiency must be determined in consultation with the State Water Board and the U.S. Coast Guard, and

cannot be finalized until after administrative appeal with the Executive Officer of the Commission. The comment is rejected.

Comment 22: Commenter agrees that the standards will aid the development of technologies, but believes it is important to draw a distinction between the shipping industry and land-based industries and those technologies installed on a vessel that meet the proposed regulation should be exempted from meeting future performance standards, should they change.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Written comments of Frank Holmes, Western States Petroleum Association.

Comment 23: Commenter states that the definitions in § 2292 are the same as those in Regulation A-1 of the International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004 (IMO 2005).

Response: Comment noted. Consistency, continuity and clarity have been addressed in §2292 for the ease of shipping industry. No change is required in the proposed regulation.

Comment 24: Commenter states that the performance standards in §2293 are not the same as those in Regulation D-2 of the International Convention for the Control and Management of Ships Ballast Water and Sediments.

Response: Performance standards for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards cannot vary from those specified in §2293 of the proposed regulation. Therefore consistency with International Convention for the Control and Management of Ships Ballast Water and Sediments (2004) is not required. Further, the proposed regulations exceed the Regulations D-2 of the International Convention for the Control and Management of Ships Ballast Water and Sediments (2004) , thus providing better protection to the People of California. The International Convention for the Control and Management of Ships Ballast Water and Sediments (2004) has not been ratified by United States and many other nations, therefore it is not yet a recognized and accepted performance standard. Comment is rejected.

Comment 25: Commenter believes that §2293 should reflect the language in Regulation D-2 of the International Convention for the Control and Management of Ships Ballast Water and Sediments.

Response: Performance standards for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards cannot vary from those specified in §2293 of the proposed regulation. The proposed regulations on performance standard reflects the language of PRC §71205.3, which is the enabling statute for the proposed regulations.

Written comments of Dan Gildor, Environmental Law Foundation

Comment 26 through 29: Commenter believes the proposed regulations should include additional sections that specify additional reporting requirements, identifying the technology used on a vessel, certification that the technology is working properly, and reporting to the Commission to verify compliance.

Response: The effective implementation of performance standards for the discharge of ballast water requires not only the adoption of numeric standards, but also the development of protocols to assess whether technologies meet the standard initially and field-level procedures and processes to verify compliance through time. Pursuant to Public Resources Code §71205.3, the proposed performance standards must be adopted by January 1, 2008. The development of protocols to evaluate treatment technologies and verify compliance is underway, and will be submitted in a separate rulemaking package in early 2008. The comment is rejected.

Written comment of Murray Fowler, Marengo Technology Group, Inc.

Comment 30: Commenter believes that the implementation schedule is too long and that the Marengo Technology ballast water treatment system will meet all standards.

Response: The implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, implementation dates cannot vary from those specified in §2294 of the proposed regulation.

Written comments of Howard Roop, Marengo Technology Group, Inc.

Comment 31 & 32: Commenter believes their ballast water treatment system can meet or exceed California's proposed performance standards.

Response: Comment is noted. No change is required in the proposed regulation.

Oral comments of John Berge, Pacific Merchant Shipping Association (Public Hearing transcript, 6/6/2007, Oakland)

Comment 33: Commenter is concerned with California's pursuit of unique standards that are not aligned with either established international standards or the more rigorous standards proposed by the United States Coast Guard and proposed federal legislation.

Response: Performance standards and the implementation schedule for performance standards must be adopted as specified in Public Resources Code §71205.3. Thus, numerical standards and implementation dates cannot vary from those specified in §2293 and §2294 of the proposed regulation.

Comment 34 & 35: Commenter requests changing language in § 2293 from "Commission" to "Administration", arguing that Commission lacks expertise to make determination that a conversion provides a life extension of ten years or more to a vessel.

Response: Staff disagrees with this argument. The quality of Flag State administrative agencies varies dramatically, severely limiting the Commission's ability to rely on them for quick and accurate responses. Furthermore, the Commission has the resources in-house or is able to contract with Maritime Classification Societies to make this determination. Many of these

classification societies make these types of determinations in their role as “recognized organizations” on behalf of many flag states or their administrations. The comment is rejected.

Comment 36: Commenter notes that previous comments on the governing statute can be found in the legislative record.

Response: Comment is noted. No change is required in the proposed regulation.

ALTERNATIVES DETERMINATION

The State Lands Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.